

# YOUR ACCOUNTANT



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### Newsletter by Email

If you would like to receive our newsletters by e-mail (in Adobe PDF format), please e-mail to Sherry Dunn at [admin@rolfebenson.com](mailto:admin@rolfebenson.com). Please include in your request the name (*individual and/or corporate*) which appears on the newsletter mailing label.

### Clients

Located on our website ([www.rolfebenson.com](http://www.rolfebenson.com)) is a link **SEND THIS FILE**. Please use this secure form when your files are too large to be sent via regular email.

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### Personal Tax

#### CAREGIVER CREDIT

The Income Tax Act (ITA) provides a caregiver federal tax credit of up to \$633 for 2010 (\$4,223 x 15%) plus a provincial tax credit for individuals residing with and providing in-home care to a parent or grandparent (including in-laws) 65 or over or an infirm dependent relative. The federal credit is reduced by 15 cents for each dollar of the dependant's net income over \$14,422 in 2010.

#### MEDICAL EXPENSE - WEIGHT LOSS PROGRAM

In a Technical Interpretation, CRA notes that fees charged for a weight loss program qualify as medical expenses if the services are diagnostic, therapeutic, or rehabilitative and are provided by medical practitioners.

A "medical practitioner" is a person who is authorized by a province or other jurisdiction to act as a "medical practitioner".

#### MEDICAL EXPENSES - COSMETIC PROCEDURES

The 2010 Federal Budget notes that purely cosmetic procedures are no longer eligible to be claimed as medical expense tax credits. This generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening.

#### MEDICAL EXPENSES - TRAVEL - AEROPLAN FREQUENT FLYER POINTS

In a Tax Court of Canada case, the taxpayer "purchased" an airline ticket from Thunder Bay to Chicago to obtain medical treatment by redeeming Frequent Flyer Points. In addition, the Appellant paid taxes of \$220 on the ticket.

The value of the Frequent Flyer Points plus the \$220 was allowed as a medical expense.

**UNIVERSITY OUTSIDE CANADA**

The ITA also provides a tuition credit where the individual is a student in full-time attendance at a university outside Canada in a course leading to a degree.

**CHILD CARE EXPENSE (CCE) - PAYMENT TO YOUR SISTER**

In a Technical Interpretation, CRA notes that where a taxpayer pays his sister (age 18 or over) to take care of his child while he is working, the amounts paid will likely be CCEs on the basis that they are only prohibited with respect to payments to the child's father or mother, a supporting person of the child, or a person who is under eighteen years of age and related to the taxpayer, or a person in respect of whom the taxpayer or supporting person has deducted a tax credit.

## Employment Income

**EMPLOYEE BIRTHDAY GIFTS**

In a Technical Interpretation, CRA notes that gifts to employees from employers of up to \$500 are tax-free as long as they have not been given to non-arm's length employees and are not performance-related awards (e.g. sales targets) or cash and near-cash awards.

Birthday gifts of up to \$500 would qualify for the non-taxable amount.

If the value of the gift is over \$500 then the excess would be taxable.

**SPORT FACILITY PAID BY THE EMPLOYER**

In a Technical Interpretation, CRA notes that a benefit related to the payment or reimbursement of sports facility dues by an employer, must be included in the employee's income if the employee, not the employer, is the primary beneficiary.

*Editor's Comment*

Membership in a facility, which is mainly for client promotion, may be considered as primarily to the advantage of the employer and may not be a taxable benefit.

**HOME PURCHASE LOAN**

An employee may borrow funds from an employer to acquire a home, or to repay a loan or debt (refinance) that was received to acquire a home. There will be no taxable benefit as long as the interest charged by the employer is equal to the prescribed interest rate at the time the loan is taken out by the employee (currently 1% until at least 30 September 2010).

**PRIVATE HEALTH SERVICES PLAN (PHSP)**

In a Technical Interpretation, CRA notes that an employer may deduct its contributions to a PHSP and the benefits received by employees will not be included in income.

A PHSP is a contract of insurance for expenses that would normally qualify as medical expenses. A Cost-Plus Plan can be considered a PHSP if it contains the basic elements mentioned above.

## Business/Property Income

**EMPLOYMENT INSURANCE BENEFITS FOR SELF-EMPLOYED PEOPLE**

Self-employed persons will be able to enter into an agreement with Service Canada to access four types of special Employment Insurance (EI) benefits:

- maternity benefits;
- parental benefits;
- sickness benefits; and
- compassionate care benefits.

To enter into an agreement with Service Canada, you may register online using My Service Canada Account. If you enter into an agreement after 1 April 2010, you will have to wait twelve months before you will be able to make a claim for EI special benefits.

Self-employed persons also include persons that own more than 40% of the voting shares of a corporation and are, therefore, otherwise, exempt from participating in the Employment Insurance Program. Self-employed persons just pay the employee portion of EI premiums.

## Owner/Manager Remuneration

**EMPLOYEE PROFIT SHARING PLAN (EPSP)**

In an Employment Insurance (EI)/Canada Pension Plan (CPP) case, the Court found that payments made through an EPSP for the owner-manager were not subject to EI or CPP.

**PERSONAL LIABILITY**

In a CRA Release, CRA warned that businesses are required to hold source deductions and GST/HST amounts in trust for the Government.

CRA can collect these unremitted amounts through garnishments, assessment of the directors, seizure and sale of assets, and any other means of recovery allowed under Federal Legislation.

CRA notes that taxpayers that have not complied may make a Voluntary Disclosure and will not be penalized or prosecuted if they make valid disclosures before they become aware of any CRA compliance action against them. Taxpayers may only have to pay the taxes owing, plus interest.

**DIRECTOR LIABILITY - DE FACTO DIRECTOR**

In a Tax Court of Canada case, CRA assessed the taxpayer for the corporation's unpaid GST of \$14,455 because she was listed as a director in the records of the company.

The taxpayer noted that she was never elected as a director and this was all a mistake. However, CRA said that, in any event, she was still a de facto director because she was acting as a director.

*Taxpayer Wins!*

The Court found that the taxpayer was not elected as a director of the corporation and did not act as a de facto director.

**DIRECTOR LIABILITY - DUE CARE AND DILIGENCE**

In a Tax Court of Canada case, Antonio, the father of Tony, was assessed personal liability for unpaid source deductions, interest and penalties of over \$651,000 and unpaid GST of over \$191,000.

*Taxpayer Wins!*

The Court noted that Tony, the son, was the one who controlled the company and intimidated his father Antonio with respect to the directorship role. The Court concluded that Antonio, with his limited commercial experience, reasonably trusted, and relied on, his son. Therefore, Antonio was held not to be liable on the basis that he exercised the required due care and diligence.

#### **DIRECTOR LIABILITY**

In an Ontario Superior Court of Justice case, Mr. Adams took action for indemnity against various Defendants for \$217,243 he was required to pay to CRA as a director for unpaid GST and source deductions on behalf of the corporation.

Mr. Adams alleged that the Defendants were officers and directors of the corporation and that they failed to ensure the corporation made the proper remittances to CRA.

#### *Mr. Adams Loses*

The Court found that the Defendants were not directors at the time the debts arose and, even if they had been, the Court noted that they exercised due diligence under the Act and would not be liable in any event.

## **Estate Planning**

#### **TRANSFER OF CAPITAL LOSSES BETWEEN SPOUSES**

In a Technical Interpretation, CRA confirmed that it still accepts the transfer of latent capital losses between spouses.

#### **HOME BUYERS PLAN (HBP)**

In a Technical Interpretation, CRA notes that up to \$25,000 may be withdrawn from an individual's RRSP to buy or build a qualifying house (first-time buyer - a four-year test).

CRA also notes that if an individual buys a qualifying house with his/her spouse, they can each withdraw up to \$25,000 from their RRSPs for a combined amount of up to \$50,000.

Under the HBP, the individual has to repay all withdrawals to his/her RRSP within fifteen years.

#### **RRSP/RESP/RRIF - QUALIFIED INVESTMENTS**

In a Technical Interpretation, CRA notes that shares of small business corporations may be qualified investments provided that certain conditions are met including, immediately after the acquisition of the share, each person who is an annuitant, a beneficiary or a subscriber is not a connected shareholder (a 10% test).

#### **FAMILY TRUSTS**

Recently CRA have been auditing Family Trusts.

A Family Trust may be used to provide control of the assets to the Trustees rather than the beneficiaries, reduce probate fees by getting the assets out of the Estate, preventing the assets from being part of the public record in a death, and providing income splitting with family members. However, Family Trusts must be properly established and operated, hence the CRA audits.

#### **TAX-FREE SAVINGS ACCOUNTS (TFSA) - OVER-CONTRIBUTIONS**

Taxpayers must be careful not to inadvertently subject themselves to TFSA penalties. For example, if a taxpayer put \$5,000 into Bank 1 in January, 2009 and withdrew that amount and then put \$5,000 into Bank

2 in February, 2009, the penalty is 1% per month (\$50 per month or \$600) because the taxpayer had excess contributions of \$5,000 for the twelve months. This is because the withdrawal does not get credited until the following year. If it is considered deliberate, there is an additional penalty of 100% of any income or gains resulting from the deliberate over-contribution.

#### **CRA TFSA PENALTY RELIEF**

CRA announced that they will consider waiving the tax on excess TFSA contributions if the taxpayer genuinely misunderstood the operation of the rules.

CRA sent out over 70,000 letters to persons who have technically had over-contributions in 2009.

If a taxpayer receives a Notice of Assessment, they may object or request a waiver of the taxes on excess contributions under Taxpayer Relief.

## **GST/HST**

#### **CREDIT CARD EXPENSES REIMBURSED**

CRA introduced a Guide which notes that where expenses are reimbursed by an employer, the employer may claim an Input Tax Credit (ITC) for the GST/HST. CRA allows a Registrant who is an employer, partnership, charity or public institution to use factors to calculate ITCs in respect of the GST/HST deemed paid by the Registrant on purchases made by the Registrant's employees, partnership members, or volunteers where credit cards have been used to make purchases.

The use of factors is to simplify the administrative burden Registrants have because credit card receipts are often a one-sum total and include gratuities, PST, etc. This is an administrative policy of the CRA and is not legislated. The choice of the factor method is an option for a Registrant. Some Registrants may prefer to use the exact calculation method.

#### **INPUT TAX CREDITS (ITCs)**

In a Tax Court of Canada case, the taxpayer filed a GST Return on 28 August 2007 and claimed Input Tax Credits of \$8,129 which were related to expenses that were incurred prior to 1 January 2003.

CRA successfully disallowed the ITCs on the basis that they were not claimed within the four-year time limit.

## **BC Harmonized Sales Tax**

#### **PROPOSED NEW PLACE OF SUPPLY RULES**

With the introduction of the harmonized sale tax in BC and Ontario on 1 July 2010, the government has taken the opportunity to revise and substantially update the "place of supply" rules of the Excise Tax Act which determine where a supply of goods and services takes place - and hence whether the Goods and Services Tax ("GST") or the Harmonized Sales Tax ("HST") applies to a particular transaction.

For the full article, please visit our web site at [www.rolfebenson.com/resources/publications/bc-hst-proposed-new-place-of-supply-rules](http://www.rolfebenson.com/resources/publications/bc-hst-proposed-new-place-of-supply-rules)

## International

### EMIGRATING FROM CANADA

Canadians that become non-residents (including moving to the United States) are deemed to dispose of certain assets such as marketable securities, private company investments, or real property. (Departure Tax)

This deemed disposition can create double tax when an individual moves to the U.S. and then disposes of such assets in an actual transaction, because the cost basis of the assets under the U.S. rules is based on the original, historical cost.

However, an election related to the deemed disposition reduces the incidence of double taxation.

### WITHHOLDING TAX

In a Technical Interpretation, CRA notes that the requirement to withhold or deduct tax applies to payments for services rendered, or to be rendered, in Canada by a non-resident person. The Regulation includes payments to a non-resident person of a fee, commission or other amount in respect of services rendered in Canada, of any nature whatever.

### TRANSFER PRICING

CRA is auditing and assessing more cross-border transactions between related parties. Caution is needed in this area.

### U.S. CITIZENS AND RESIDENTS

There is a significant compliance burden to U.S. citizens and residents if they own Canadian (or other non-U.S.) mutual funds.

## Did You Know . . .

### CORPORATION FILINGS

Corporations with gross revenues over \$1 million must file their Federal Income Tax Return electronically for all taxation years ending after 2009 - unless they are specifically exempt. However, the penalty only applies for taxation years ending after 2010.

### NATURAL PERSON - LOSES AGAIN

In a Federal Court case the Plaintiff's claim that he was not subject to income tax because he was a "natural person" was dismissed. The Court noted that this argument has been analyzed and dismissed in many other Canadian court cases.

The Plaintiff's efforts to use the Court to advance this untenable theory were "forlorn and doomed" from the outset.

## Firm News

Fall is always a quiet time in a CA office but with 50 staff in our stable, there is always something happening. We have three students writing their Uniform Final Exams including Ian Brown, Brenda Lee and James Smeaton. We wish them well and hope that we will have three new CA's around the beginning of December. New students usually start at this time of year and our first one has the remarkable name of Michael Jordan (I think he is 5'6" not 6'5" like the other one). Anna Pipa, one of our long-time client accounting people has just had a baby girl and will be away for a year. Rob Watts will be attending the Annual AGN conference in Lisbon, Portugal during the last week of September. David Rolfe will attend the bi-annual Sovereign Council Meeting of the Order of St. John in Budapest, Hungary. Fall entertainment in the office has included groups attending the Vancouver Canadians baseball game and a B.C. Lions game at Empire Stadium. Our growth brings many challenges to structure and organization but among the good things is the expansion of our tax unit which now includes Geoff Bree who has been with us for 15 years and new-comers Warren Mui and Daniella Sin. This gives us broader coverage of our important tax field and some extra expertise in areas of HST and SR&ED Claims.

An area where we try to help our clients is in making sure they have the best advisors in a variety of areas. We do not practice law and we don't recommend stocks but we do discuss performance in these areas with our clients and often have the opportunity to recommend professional services. Under no circumstances do we receive any reward for this service other than the fact that our clients are satisfied. We often do a simple form of analysis of our clients security portfolios and will discuss them with their brokers. We feel this type of relationship with the legal and investment community provides added value to our service and theirs.

Serving our clients is what gives all of us the satisfaction that we look for in a profession and we still enjoy getting a new client as much as we did many years ago. The referral of business to us is the greatest compliment that we can receive. To our clients, we thank you for helping us to become the Firm we are today.

DRLR